

104TH CONGRESS
1ST SESSION

H. R. 1946

To protect the fundamental right of a parent to direct the upbringing of
a child, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1995

Mr. LARGENT (for himself, Mr. PARKER, Mr. ALLARD, Mr. BAKER of Louisiana, Mr. BARTLETT of Maryland, Mr. BARR, Mr. BARTON of Texas, Mr. BRYANT of Tennessee, Mr. CALVERT, Mr. CHAMBLISS, Mrs. CHENOWETH, Mr. CHRISTENSEN, Mr. CHRYSLER, Mr. CLEMENT, Mr. COBURN, Mr. COMBEST, Mr. COOLEY, Mr. CRANE, Mr. CRAPO, Mr. DELAY, Mr. DICKEY, Mr. DOOLITTLE, Mr. DORNAN, Mr. DUNCAN, Mr. EMERSON, Mr. FORBES, Mr. FOX of Pennsylvania, Mr. GOODLATTE, Mr. GRAHAM, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYWORTH, Mr. HEFLEY, Mr. HILLEARY, Mr. HOSTETTLER, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. KNOLLENBERG, Mr. LEWIS of Kentucky, Mr. METCALF, Mr. MONTGOMERY, Mrs. MYRICK, Mr. NEUMANN, Mr. PETRI, Mr. PORTER, Mr. QUILLEN, Mr. RAHALL, Mr. ROBERTS, Mr. SALMON, Mrs. SEASTRAND, Mr. SENSENBRENNER, Mr. SHADEGG, Mrs. SMITH of Washington, Mr. SOLOMON, Mr. STEARNS, Mr. STOCKMAN, Mr. STUMP, Mr. TATE, Mr. TAUZIN, Mr. TAYLOR of North Carolina, Mr. TIAHRT, Mr. THORNBERRY, Mrs. VUCANOVICH, Mr. WAMP, Mr. WATTS of Oklahoma, Mr. WELLER, Mr. WICKER, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect the fundamental right of a parent to direct the
upbringing of a child, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Parental Rights and
3 Responsibilities Act of 1995”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the Supreme Court has regarded the right
7 of parents to direct the upbringing of their children
8 as a fundamental right implicit in the concept of or-
9 dered liberty within the 14th amendment to the
10 Constitution of the United States, as specified in
11 Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce
12 v. Society of Sisters, 268 U.S. 510 (1925);

13 (2) the role of parents in the raising and
14 rearing of their children is of inestimable value and
15 deserving of both praise and protection by all levels
16 of government;

17 (3) the tradition of western civilization recog-
18 nizes that parents have the responsibility to love,
19 nurture, train, and protect their children;

20 (4) some decisions of Federal and State courts
21 have treated the right of parents not as a fundamen-
22 tal right but as a nonfundamental right, resulting in
23 an improper standard of judicial review being ap-
24 plied to government conduct that adversely affects
25 parental rights and prerogatives;

1 (5) parents face increasing intrusions into their
2 legitimate decisions and prerogatives by government
3 agencies in situations that do not involve traditional
4 understandings of abuse or neglect but simply are a
5 conflict of parenting philosophies;

6 (6) governments should not interfere in the de-
7 cisions and actions of parents without compelling
8 justification; and

9 (7) the traditional 4-step process used by courts
10 to evaluate cases concerning the right of parents de-
11 scribed in paragraph (1) appropriately balances the
12 interests of parents, children, and government.

13 (b) PURPOSES.—The purposes of this Act are—

14 (1) to protect the right of parents to direct the
15 upbringing of their children as a fundamental right;

16 (2) to protect children from abuse and neglect
17 as the terms have been traditionally defined and ap-
18 plied in statutory law, such protection being a com-
19 pelling government interest;

20 (3) while protecting the rights of parents, to ac-
21 knowledge that the rights involve responsibilities and
22 specifically that parents have the responsibility to
23 see that their children are educated, for the purposes
24 of literacy and self-sufficiency, as specified by the

1 Supreme Court in Wisconsin v. Yoder, 406 U.S. 205
2 (1972);

3 (4) to preserve the common law tradition that
4 allows parental choices to prevail in a health care de-
5 cision for a child unless, by neglect or refusal, the
6 parental decision will result in danger to the child's
7 life or result in serious physical injury of the child;

8 (5) to fix a standard of judicial review for pa-
9 rental rights, leaving to the courts the application of
10 the rights in particular cases based on the facts of
11 the cases and law as applied to the facts; and

12 (6) to reestablish a 4-step process to evaluate
13 cases concerning the right of parents described in
14 paragraph (1) that—

15 (A) requires a parent to initially dem-
16 onstrate that—

17 (i) the action in question arises from
18 the right of the parent to direct the up-
19 bringing of a child; and

20 (ii) a government has interfered with
21 or usurped the right; and

22 (B) shifts the burdens of production and
23 persuasion to the government to demonstrate
24 that—

1 (i) the interference or usurpation is
2 essential to accomplish a compelling gov-
3 ernmental interest; and

4 (ii) the method of intervention or
5 usurpation used by the government is the
6 least restrictive means of accomplishing
7 the compelling interest.

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act:

10 (1) APPROPRIATE EVIDENCE.—The term “ap-
11 propriate evidence” means—

12 (A) for a case in which a government seeks
13 a temporary or preliminary action or order, ex-
14 cept cases which terminate parental custody or
15 visitation, evidence that demonstrates probable
16 cause; and

17 (B) for a case in which the government
18 seeks a final action or order, or in which it
19 seeks to terminate parental custody or visita-
20 tion, clear and convincing evidence.

21 (2) CHILD.—The term “child” has the meaning
22 provided by State law.

23 (3) PARENT.—The term “parent” has the
24 meaning provided by State law.

1 (4) RIGHT OF A PARENT TO DIRECT THE UP-
2 BRINGING OF A CHILD.—

3 (A) IN GENERAL.—The term “right of a
4 parent to direct the upbringing of a child” in-
5 cludes, but is not limited to a right of a parent
6 regarding—

7 (i) directing or providing for the edu-
8 cation of the child;

9 (ii) making a health care decision for
10 the child, except as provided in subpara-
11 graph (B);

12 (iii) disciplining the child, including
13 reasonable corporal discipline, except as
14 provided in subparagraph (C); and

15 (iv) directing or providing for the reli-
16 gious teaching of the child.

17 (B) NO APPLICATION TO PARENTAL DECI-
18 SIONS ON HEALTH CARE.—The term “right of
19 a parent to direct the upbringing of a child”
20 shall not include a right of a parent to make a
21 decision on health care for the child that, by ne-
22 glect or refusal, will result in danger to the life
23 of the child or in serious physical injury to the
24 child.

1 (C) NO APPLICATION TO ABUSE AND NE-
2 GLECT.—The term “right of a parent to direct
3 the upbringing of a child” shall not include a
4 right of a parent to act or refrain from acting
5 in a manner that constitutes abuse or neglect of
6 a child, as the terms have traditionally been de-
7 fined.

8 (5) STATE.—The term “State” includes the
9 District of Columbia, the Commonwealth of Puerto
10 Rico, and each territory and possession of the Unit-
11 ed States.

12 **SEC. 4. PROHIBITION ON INTERFERING WITH OR USURP-**
13 **ING RIGHTS OF PARENTS.**

14 No Federal, State, or local government, or any offi-
15 cial of such a government acting under color of law, shall
16 interfere with or usurp the right of a parent to direct the
17 upbringing of the child of the parent.

18 **SEC. 5. STRICT SCRUTINY.**

19 No exception to section 4 shall be permitted, unless
20 the government or official is able to demonstrate, by ap-
21 propriate evidence, that the interference or usurpation is
22 essential to accomplish a compelling governmental interest
23 and is narrowly drawn or applied in a manner that is the
24 least restrictive means of accomplishing the compelling in-
25 terest.

1 **SEC. 6. CLAIM OR DEFENSE.**

2 Any parent may raise a violation of this Act in an
3 action in a Federal or State court, or before an adminis-
4 trative tribunal, of appropriate jurisdiction as a claim or
5 a defense.

6 **SEC. 7. DOMESTIC RELATIONS CASES AND DISPUTES BE-**
7 **TWEEN PARENTS.**

8 This Act shall not apply to—

9 (1) domestic relations cases concerning the ap-
10 pointment of parental rights between parents in cus-
11 tody disputes; or

12 (2) any other dispute between parents.

13 **SEC. 8. ATTORNEY'S FEES.**

14 Subsections (b) and (c) of section 722 of the Revised
15 Statutes (42 U.S.C. 1988 (b) and (c)) (concerning the
16 award of attorney's and expert fees) shall apply to cases
17 brought or defended under this Act. A person who uses
18 this Act to defend against a suit by a government de-
19 scribed in section 4 shall be construed to be the plaintiff
20 for the purposes of the application of such subsections.

